
Costs Decision

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 31 January 2022

Costs application in relation to Appeal Ref: APP/D3640/X/21/3280990
Wellfield, Philpot Lane, Chobham, Woking GU24 8HE

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr T Robinson for a full award of costs against Surrey Heath Borough Council.
 - The appeal was against the refusal of an application for a certificate of lawful use or development for the stationing of a shepherd's hut in a residential garden.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. National Planning Practice Guidance (NPPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The previous paragraph makes it clear that costs may only be awarded for expenses incurred during the appeal process. The Council's behaviour at application stage cannot therefore contribute to an award of costs. But the appeal would not have been necessary if the Council had taken account of its own conclusions as set out in the Officer's Delegated Report. They concluded that the stationing of a shepherd's hut would not be operational development or a material change of use. Development as defined by Section 55(1) of the Act would not therefore be carried out and would not, under Section 57(1), require a grant of planning permission.
4. The Article 4 Direction was issued to control development that was, at that time, otherwise permitted under Class IV of the First Schedule to The Town and Country Planning General Development Order 1950. That legislation permitted development that would otherwise require a grant of planning permission and the Article 4 Direction withdrew that permission for specified development. It is not, as suggested in the Delegated Report, "...wider than that and prohibits the stationing of caravans..." and it does not, and could not, control acts that are not development. The stationing of a shepherd's hut on the appeal site, on the Council's own evidence, is not development and the Article 4 Direction is not relevant.
5. The Council misapplied the Article 4 Direction and this was the only reason that the application was refused. The Council acted unreasonably in refusing the application and the appeal was, in this regard, unnecessary. The Appellant has incurred wasted expense, though this is limited to those costs incurred in submitting the appeal. A partial award of costs is therefore justified.

Costs Order

6. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Surrey Heath Borough Council shall pay to Mr T Robinson, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in making the appeal; such costs to be assessed in the Senior Courts Costs Office if not agreed.

7. The applicant is now invited to submit to Surrey Heath Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

John Braithwaite

Inspector